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Michael Marchand, Chairman of the Colville Business Council; Wenatchi Constituent Tribe;
John St. Pierre, Spokesman for the Wenatchi Constituent Tribe*

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES

OF AMERICA, et al.,

Plaintiffs,

v.

STATE OF OREGON, et al.,

Defendants.

Civil No. 68-513-KI

**THE COLVILLE DEFENDANTS'
MOTION TO MODIFY INJUNCTION
TO ALLOW FISHING BY BOTH THE
YAKAMA NATION AND THE
COLVILLE WENATCHI AT
WENATSHAPAM FISHERY**

REQUEST FOR ORAL ARGUMENT

STATEMENT REQUIRED BY LOCAL RULE 7.1(a)(1)(A)

As required by Local Rule 7.1(a)(1)(A), counsel for the Colville defendants (the Confederated Tribes of the Colville Reservation, the Wenatchi Constituent Tribe, Michael Marchand, Chairman of the Colville Business Council, and John St. Pierre, Spokesman for the Wenatchi Constituent Tribe) has contacted Tim Weaver, counsel for the plaintiff Confederated Tribes and Bands of the Yakama Nation twice by telephone in a good faith effort to secure Yakama's assent to a modification of the permanent injunction issued by this Court on August 18, 2003. Mr. Weaver stated that "he has authority to talk about a mediation" and that he would want any Colville Wenatchi fishing to come out of the State's share. He did not agree to the modification of the injunction proposed in this motion.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), the Colville defendants request oral argument on this motion, and suggest that the argument be held on a date not later than May 3, 2007. This would allow time for the briefing of this matter by the parties, for discussions between the parties and for the Court to act on the motion prior to the beginning of the 2007 fishing season, which could take place by mid-May.

PROPOSED TERMS OF THE MODIFICATION

Pursuant to Fed. R. Civ. P. 60(b)(5), the Colville defendants respectfully request that the Court modify its injunction issued August 18, 2003 to read as set out below:

- 1) Both the Colville Wenatchi and the Yakama Nation shall have equal rights to fish at the site of the Wenatshapam Fishery (which includes the Leavenworth Hatchery and Icicle Creek) during each fishing season until the case is resolved.**
- 2) All Colville Wenatchi who wish to fish at Wenatshapam Fishery will be issued a card by the Colville Tribes certifying that they are members of the Wenatchi Constituent Tribe of the Colville Reservation.**
- 3) Fishing by both the Colville Wenatchi and the Yakama Nation at the Wenatshapam Fishery will be for traditional and subsistence use only.**
- 4) The Colville Wenatchi and the Yakama Nation shall comply with the dates and requirements set by the United States Fish and Wildlife Service in consultation with the Washington Department of Fish and Wildlife for the Icicle Creek fishing season.**
- 5) The Colville Wenatchi will fish Thursdays, Fridays, and Saturdays. The Yakama Nation will fish Mondays, Tuesdays, and Wednesdays.**
- 6) The Colville Tribes and the Yakama Nation shall each police its own fishermen.**
- 7) The legal fishing gears for salmon and steelhead are dipnets, set nets, weirs, or rod and reel with bait or lures having single hooks. Double or treble hooks are prohibited. Any other fishing methods, such as snagging of fish, are unlawful. It shall be unlawful to place fishing**

platforms or to injure salmon and steelhead within 30 feet of any fish ladder, fishway or fish bypass pipes associated with irrigation canal fish screening structures. Fishing is not allowed from boats or any other floating devices.

- 8) Any scaffolding erected by any person for purposes of fishing can be used by members of either the Colville Wenatchi or the Yakama Nation.**

The reasons for the proposed modification are explained in our accompanying memorandum.

Respectfully submitted,

Dated: March 26, 2007

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